

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 7, 2005

IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

**DOCKET NO.
04-00288**

**ORDER DENYING MOTION FOR AN ORDER AUTHORIZING TARIFFS
TO BECOME EFFECTIVE ON FEBRUARY 7, 2005**

This matter came before the Hearing Officer upon the filing by Tennessee American Water Company ("TAWC" or the "Company") on February 4, 2005 of the *Motion for an Order Authorizing Tariffs to Become Effective on February 7, 2005* and tariffs reflecting revised rates and charges with an effective date of February 7, 2005.

BACKGROUND

On January 31, 2005, the voting panel¹ assigned to this docket addressed a settlement agreement signed by counsel for TAWC and the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"). After considering the written and oral representations of TAWC, the Consumer Advocate, the City of Chattanooga and the Chattanooga Manufacturers Association ("CMA") regarding the parties' agreement, the panel

¹ The voting panel is Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle

voted unanimously to accept the settlement agreement subject to additional conditions and modifications as outlined and agreed to by all of parties.

At the hearing on the settlement agreement and in response to a question from Director Tate concerning notification of the rate change to its customers, TAWC moved “to end the suspension and allow the rates to go into effect immediately.”² TAWC then stated that, in addition to newspaper coverage, “[i]t would be our normal practice to also put a message on each bill that goes out over the next billing cycle, just a short message about the rate increase and the amount of it and the percentage and so forth.”³ TAWC further stated, “We would immediately put a bill message on every bill where the new rates came out, until we got through the entire bill cycle and each customer would have that message.”⁴ TAWC again moved to place the rates into effect “as soon as they can be done through the billing cycles and that sort of thing.”⁵ The Consumer Advocate did not object as long as there was “notice to consumers.”⁶

The panel then authorized the Hearing Officer to act on behalf of the Authority regarding any matters or issues that might occur until the close of the matter, and specifically to act on any written motion concerning ending the suspension of the tariff.⁷ Director Kyle then commented to TAWC, “[O]f course you’re not asking for retroactive, but I would say no sooner than the next billing cycle” to which counsel for TAWC replied, “That would be fine.”⁸ CMA asked whether there would be “an opportunity to review and respond, if necessary, to the motion” and

² Transcript of Proceedings, pp 21-22 (January 31, 2005)

³ Transcript of Proceedings, p 22 (January 31, 2005)

⁴ Transcript of Proceedings, p 23 (January 31, 2005)

⁵ Transcript of Proceedings, pp 23- 24 (January 31, 2005)

⁶ Transcript of Proceedings, p 24 (January 31, 2005)

⁷ Transcript of Proceedings, pp 23-26 (January 31, 2005)

⁸ Transcript of Proceedings, p 25 (January 31, 2005)

Chairman Miller responded, “Yes. He’ll file a written motion and the ... hearing officer will give you an opportunity to respond.”⁹

On February 4, 2005, a written settlement agreement signed by all parties was filed with the Authority. Also on February 4, 2005, TAWC filed the *Notice of Withdrawal of Oral Motion to Terminate Suspension of Tariffs*, the *Motion for an Order Authorizing Tariffs to Become Effective on February 7, 2005* and tariffs reflecting revised rates and charges with an effective date of February 7, 2005. In the *Motion for an Order Authorizing Tariffs to Become Effective on February 7, 2005*, TAWC requests that the Authority enter an order authorizing the Company to make the revised tariffs filed on February 4, 2005 effective on February 7, 2005. TAWC states that TRA Rule 1220-4-1-.06(4),¹⁰ which requires tariffs to be filed at least thirty (30) days before the date upon which they are to become effective, can be waived by the Authority upon application and for good cause shown. As good cause for the waiver, TAWC relies upon the settlement agreement in which the parties have agreed that there is a revenue deficiency that requires an across the board rate increase and that the public fire hydrant service charges should be transferred to all customers in an across the board rate increase. Further, TAWC states that the Authority has approved the settlement agreement and the rate design and the attrition year on which the revenue deficiency is calculated is calendar year 2005. Thus, the Company argues, there is no good reason for delaying implementation of the revised tariffs. On February 4, 2005, TAWC filed a copy of a press release dated January 31, 2005 announcing the change in rates.¹¹ In addition, the Company states that “commencing with the effective date of the new tariffs, each

⁹ Transcript of Proceedings, pp 25-26 (January 31, 2005)

¹⁰ Tenn Comp Rules and Regs 1220-4-1- 06(4) states

(4) All tariffs and supplements affecting Tennessee intrastate business shall be filed with the Tennessee Regulatory Authority at least thirty days before the date upon which they are to become effective, unless upon application and for good cause shown the Authority may waive the thirty days time limit or any portion thereof

¹¹ *Tennessee American Water Company’s Notice of Withdrawal of Oral Motion to Terminate Suspension of Tariffs, Exhibit C* (February 4, 2005)

customer's bill will contain a bill message stating as follows: 'This bill includes a rate increase of approximately 3.83% which was approved by the Tennessee Regulatory Authority on January 31, 2005.' ”¹²

Also on February 4, 2005, CMA filed a letter in which it objected to the proposed tariffs and opposed any increase in rates prior to the expiration of the suspension of the tariff, March 9, 2005.¹³ In its letter, CMA states its position that allowing a rate increase to “become effective prior to the statutory deadline” of March 9, 2005 “would give the company an undeserved windfall in excess of the \$300,000 annual increase agreed to by the parties and would therefore be inconsistent with the settlement agreement.”¹⁴ In addition, CMA argues that “all the accounting evidence entered into the record in this case concerning the impact of these proposed rates is based on the assumption that the new rates will not become effective until the expiration of the six-month period. To allow the rate increase to become effective sooner will give the company a revenue bonus in excess of the rate increase agreed to by the parties and will unfairly burden the company's customers who did not anticipate that the rate increase would occur prior to March 10.”¹⁵ Finally, CMA argues that “[t]here is no legal or equitable reason for the Authority to give the company a \$25,000 windfall ... and impose a \$100,000 penalty on retail customers ... simply because the parties reached a settlement agreement one month prior to the expiration of the six-month statutory deadline.”¹⁶ No other parties have responded to the Company's filings.

¹² *Tennessee American Water Company's Notice of Withdrawal of Oral Motion to Terminate Suspension of Tariffs*, p 2 (February 4, 2005)

¹³ *See Letter from Henry Walker to Jean Stone, Hearing Officer* (February 4, 2005)

¹⁴ *Id* at p 1

¹⁵ *Id* at p 2

¹⁶ *Id*

DISCUSSION

As noted above, the panel has authorized the Hearing Officer to act on behalf of the Authority regarding any matters or issues that might occur until the close of this docket and, specifically, to act on any written motion concerning ending the suspension of the tariff. TAWC has given notice of its withdrawal of the oral motion to terminate the suspension of the tariffs originally filed in this docket and has filed new tariffs apparently based upon the terms of the settlement agreement. However, CMA asserts that the immediate rate increase would be inconsistent with the settlement agreement. TAWC filed its new tariffs on Friday, February 4, 2005, with an effective date of the next business day, Monday, February 7, 2005. TAWC has requested that the Authority waive TRA Rule 1220-4-1-.06(4), which requires a tariff to be filed with the TRA at least thirty days prior to the date upon which the tariff becomes effective, based upon good cause shown. As good cause for the requested waiver, TAWC relies upon the settlement agreement in which the parties have agreed that there is a revenue deficiency that requires an across the board rate increase and the public fire hydrant service charges should be transferred to all customers in an across the board rate increase. Further, TAWC states that the Authority has approved the settlement agreement and the rate design and the attrition year on which the revenue deficiency is calculated is calendar year 2005.

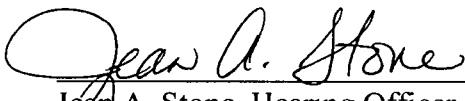
Although the Company has filed the new tariffs with the Authority, neither the tariffs nor the motion requesting the tariffs take effect on February 7, 2005 contain any justification for those rates which shows that the rates are in compliance with the approved settlement agreement. Nor does the simultaneous delivery of the notice of the rate increase with a bill for those increased rates, even coupled with a press release, appear to satisfy the concerns expressed by

the members of the panel about customer notification of the increase. The Consumer Advocate also expressed concerns about notice to customers at the hearing on the settlement agreement and has not had an opportunity to respond to the tariff filings or the motion. In addition, Chairman Miller stated at the hearing that the parties would have the opportunity to respond to a written motion to lift the suspension of the original rates. Although the Company has withdrawn its oral motion to lift that suspension, its *Motion for an Order Authorizing Tariffs to Become Effective on February 7, 2005* is, in essence, the same in that both motions request increased rates to go into effect.

The Hearing Officer finds that the concerns raised by the panel and the Consumer Advocate at the hearing regarding customer notification, the CMA's allegation that the immediate rate increase would be inconsistent with the settlement agreement, the lack of opportunity for the other parties to the settlement agreement to respond to the filings, and the lack of any justification in those filings showing that the rates are in compliance with the approved settlement agreement outweigh the reasons cited by the Company as good cause for the waiver of TRA Rule 1220-4-1-.06(4). Therefore, the *Motion for an Order Authorizing Tariffs to Become Effective on February 7, 2005* is denied.

IT IS THEREFORE ORDERED THAT:

The *Motion for an Order Authorizing Tariffs to Become Effective on February 7, 2005* filed by the Tennessee American Water Company on February 4, 2005 is denied.


Jean A. Stone, Hearing Officer